

STATE OF MINNESOTA
COUNTY OF BECKER

DISTRICT COURT
Employment
SEVENTH JUDICIAL DISTRICT

Margaret Campbell,
Plaintiff,
vs.

Court File No. 03-CV-19-266

Honor the Earth,
Defendant.

**MOTION FOR STAY
OF DISCOVERY**

TO: Christy L. Hall of Gender Justice, 200 University Ave. W, Suite 200 St. Paul, Minnesota 55103, and Becker County Court Administrator.

COMES NOW Defendant Honor the Earth, by and through its attorney Frank Bibeau, to respectfully motion for stay for the Order dated September 9, 2019. Pursuant to Rule 108.02. Subd. 1(a), a party seeking a stay of enforcement of the judgment or order of a trial court pending appeal must move first in the trial court. Defendant herein seeks a *Stay* of all non-dispositive proceedings at this district court, including this Court's *Order Granting Motion to Compel* dated September 9, 2019, during the pendency of the appellate court proceedings for A19-1232, challenging the subject matter jurisdiction of the district court.

BACKGROUND

Defendant sought to preserve certain defenses in its *Answer* of Feb. 7, 2019, including Rule 12.02 (a) lack of jurisdiction over subject matter and lack

of jurisdiction over the person (a non-profit corporation). On the same day, Defendant also filed a dispositive *Motion to Dismiss* for lack of subject matter jurisdiction. At oral arguments on May 8, 2019, Defendant gave response to the Court's question about denying the motion to dismiss and Defendant gave oral notice of intent to appeal a denial of the motion to dismiss. (See Transcript page 10). Plaintiff served discovery requests June 3, 2019, while the Court was considering jurisdictional arguments. Defendant served a *motion for stay* June 19, 2019. On July 2, 2019, the Court issued an *Order Denying Motion to Dismiss and Motion for Stay*.

On August 5, 2019, Defendant timely filed *Notice of Appeal* regarding the dispositive matter of lack of jurisdiction. Plaintiff filed their *Notice of Motion and Motion to Compel Discovery* August 15, 2019, giving notice that the "motion is scheduled to be heard on September 25, 2019, at 3:00 before Judge Thilmony in Becker County Court."

On Sept. 9, 2019, the Court decided that "the matter came on" without any notice to Defendant and issued an *Order Granting Motion to Compel Discovery*. In its letter the Court explained that Defendant's *motion for stay* was denied when the Court found it had jurisdiction over this lawsuit.

On Sept. 10, 2019, Defendant found the Sept. 9, 2019, *Order Granting Motion to Compel Discovery* in email and promptly filed the Defendant's *Response that had been drafted to date*, with affidavit and exhibits and cover

letter citing Rule 115 explaining when a response was due, and that Defendant still had more than 7 days before Sept. 25, 2019. Later that day, also pursuant to Rule 115, Defendant filed a letter request to the Judge for *motion to reconsider* the decision of the Sept. 9, because the decision was more than two weeks premature made without any notice to Defendant. On Sept. 12, 2019, the Honorable Judge Thilmony explained the burden is on Defendant to file a *motion to stay discovery*.

In support of this motion to stay discovery inter alia Defendant cites the *unpublished opinion* of the C.H. Robinson court which *relied on Hunt* directly which re-affirmed

that the district court abused its discretion in denying appellants' motions to stay discovery. The right to immediately appeal the denial of a motion to dismiss for lack of personal jurisdiction stems from our supreme court's judgment that a defendant who is not subject to the jurisdiction of this state should not be "compelled ... to take up the burden of litigation in this state." Hunt v. Nevada State Bank, 285 Minn. 77, 89, 172 N.W.2d 292, 300 (Minn. 1969). *Allowing respondents to obtain discovery from appellants during the pendency of the appeal not only would defeat the purpose of allowing an immediate appeal, but would cause irreparable injury to appellants' asserted rights to avoid defending litigation in this state.*

(See Hall Aff. Ex. L, at p. 67, C.H. Robinson Worldwide, Inc. v. XPO Logistics, Inc., 2014 WL 12668519 (*unpublished*) (Minn. Ct. App. February 25, 2014)(Emphasis added)).

CONCLUSION

Based on the record, orders and letters, the Rules of Civil Procedure, existing case law, and because an immediate appeal has been timely filed by Defendant challenging subject matter jurisdiction of this Court (A19-1232), Defendant does now serve, file and request a *motion to stay discovery* and other potential *non-dispositive* matters in the above-captioned matter pursuant to Rule 108.02. Subd. 1(a), for this lawsuit during the pendency of the present appeal for this matter A19-1232.

Respectfully submitted,

Dated: September 16, 2019

/s/ Frank Bibeau
Frank Bibeau (Mn# 306460)